IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4987 of 1998

with

SPECIAL CIVIL APPLICATION No 4996 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARJIBHAI VALLABHBHAI SARDHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4987 of 1998
   MR ANSHIN H DESAI for Petitioner
   MR MA BUKHARI, AGP, for Respondent No. 1, 2
   MS NINUL BALA for MR BM MANGUKIYA for Respondent No. 3

2. Special Civil Application No 4996 of 1998
   MR ANSHIN H DESAI for Petitioner
   MR MA BUKHARI, AGP, for Respondent No. 1, 2
   MS NINUL BALA for MR BM MANGUKIYA for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/07/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the parties and perused the special civil applications. As in both these matters, not only the parties are common but the grounds raised for challenging the orders passed by the respondents-authorities are also common, the same are being taken up for hearing together and are being disposed of by this common order. For the decision of these two matters, the facts and grounds are referred from special civil application No.4987 of 1998 with the agreement of the learned counsel for the parties.

2. The petitioner is challenging the legality and propriety of the order passed by the respondent No.1 dated 6th June, 1998 in revision application No.APM/1897/90/CH cancelling the licence granted to the petitioner under the provisions of the APMC Act as being illegal, arbitrary, perverse and against the settled provisions of law. On 27th June, 1997, an application was made by the respondent No.3 to the respondent No.2 seeking declaration that the petitioner be declared disqualified to contest as member of the Agricultural Produce Market Committee, Junagadh. On the same day, the respondent No.2 passed the order disqualifying the petitioner under the provisions of the APMC Act. It is the case of the petitioner that the agenda for election was issued on 30th June, 1997 for Chairmanship of the APMC, Junagadh and the elections were to be held on 10th July, 1997. On 30th December, 1996, the petitioner paid up all the dues and payable cess, fees and market rent etc. to the APMC. the petitioner's licence was cancelled on the ground that he has not paid the cess fees and market rent as well as he does not possess the licence under the provisions of the Essential Commodities Act. It is the case of the petitioner that for the commodities in which the petitioner was dealing i.e. castor seeds he does not need to obtain licence under the provisions of the Essential Commodities Act. The petitioner filed an appeal against the order of the respondent No.2 before the State Government which has also been rejected under the order dated 6th June, 1998. Hence, this special civil application.

3. Learned counsel for the petitioner contended that the petitioner paid all the cess, fees and market rent before the agenda for election was issued for the office of Chairman of the APMC. This has been paid on 30th

December, 1996. It has next been contended that the petitioner was not required to obtain the licence under the provisions of the Essential Commodities Act as he was dealing in a commodity which is not an essential commodity. Shri Desai contended that both these points were raised before the appellate authority but the appellate authority has decided the same in most cursory manner. It is contended that even if it is accepted that the amount has been paid by the petitioner after notice for cancellation of licence has been given, it is hardly material and it cannot be taken to be a ground for cancelling the licence for the reason that the dues are being paid before the final order is passed. Carrying this contention Shri Desai submitted that it is a clear case where under political pressure this order has been passed.

4. Learned counsel for the respondents supported the orders passed by the authorities.

5. I find from the order of the appellate authority that the petitioner paid the market cess, fees on 24th November, 1996 and the amount of rent of shop has been paid on 21st December, 1996. Notice for cancellation of his licence was given to the petitioner on 10th December 1996. On these facts, learned counsel for the parties are not at variance. From these facts, it is clear that so far as one part of the dues are concerned, it has been paid before the notice was given but the second part has been paid after the notice. I find sufficient merits in the contention of the learned counsel for the petitioner that immediately after giving of notice, the petitioner paid all the dues and he could not have been disqualified from contesting the election merely on the ground of nonpayment of rent of the shop. In this case, the authorities have not passed the order for considerable time and at the fag end when the election agenda was to be declared, this order has been passed. I find from the order of the appellate authority that the counsel for the petitioner raised the contention that the commodity in which the petitioner is dealing, licence under the provisions of the Essential Commodities Act was not required. This contention even has not been referred to by the appellate authority what to say to decide the same. There is an error apparent on the face of the order and it cannot be allowed to stand.

6. As a result of the aforesaid discussion, both these special civil applications succeeds and the same are allowed. The order of the appellate authority impugned in both these matters i.e. dated 6th June, 1998

in first petition and dated 3rd June, 1998 in second petition are quashed and set aside and the matters are remanded back to the appellate authority for decision thereof in accordance with law after hearing the parties in appeal. The appellate authority is directed to decide the appeals of the petitioner within a period of two months from the date of receipt of writ of this order. Rule is made absolute accordingly in both these matters. The respondent-State of Gujarat is directed to pay Rs.2000/= as costs of each petition to the petitioner.

****

zgs/-